

and the execution of bonds in the aggregate sum of \$2,080, in conformity with section 10 of the act, conditioned in part that it be reworked so as to contain at least 80 per cent of butterfat.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13605. Adulteration and misbranding of canned salmon. U. S. v. 100 Cases, et al., of Salmon. Tried to the court and a jury. Verdict for the Government. Decrees of condemnation and forfeiture. Product released under bond. (F. & D. Nos. 17265, 17266, 17270, 17271, 17287, 17375, 17387. S. Nos. C-3877, C-3883, C-3884, C-3905, C-3914, C-3954.)

On February 10 and 17 and March 16 and 22, 1923, respectively, the United States attorney for the Western District of Texas, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels, and thereafter amendments to two of the said libels, praying the seizure and condemnation of 2,205 cases of canned salmon, remaining in the original unbroken packages in various lots at Brenham, Austin, and Waco, Tex., respectively, alleging that a portion of the article had been shipped by the Pacific American Fisheries, Seattle, Wash., October 11, 1922, that a portion was shipped by G. Batcheller Hall, Seattle, Wash., November 28, 1922, and that the remainder thereof was shipped by the Kelley-Clarke Co., Seattle, Wash., in part October 14, 1922, in part November 10, 1922, and in part December 8, 1922, and that the said article had been transported from the State of Washington into the State of Texas, and charging adulteration with respect to all of the said product and misbranding with respect to 1,014 cases of the product, in violation of the food and drugs act. The cans containing the article were labeled, variously: "Daybreak Brand Chum Salmon Packed In Alaska By Southern Alaska Canning Co., Seattle, Wash."; "Sambo Brand Chum Salmon Packed In Alaska By Southern Alaska Canning Co., Main Office Seattle, Wash."; "Snowshoe Brand Select Pink Alaska Salmon Packed In Alaska By Southern Alaska Canning Co. Seattle."; "Diamond "S" Brand Pink Salmon Packed By Alaska Sanitary Packing Co. Wrangell, Alaska, Main Office Seattle"; "King Bird Brand Pink Salmon Packed For Pacific American Fisheries, Bellingham, Wash."; "Oasis Brand Pink Salmon Packed By Pyramid Packing Co., Sitka, Alaska G. Batcheller Hall Co. Distributor Seattle, Wash." The King Bird brand salmon was further labeled: (Case) "King Bird Brand Salmon Packed by George Inlet Packing Co. Ketchikan, Alaska."

Adulteration of the article was alleged in the libels with respect to all of the said product for the reason that it consisted in part of a decomposed, filthy, and putrid animal substance.

Misbranding was alleged with respect to the product involved in the 100 cases of Snowshoe brand salmon for the reason that the design in relief of a salmon, and the words "Select Pink" and "Alaska Salmon," borne on the labels of the cans containing the article, were false, in that they represented that the contents of the said cans was select pink Alaska salmon, whereas the contents of the said cans was a poor pack of pink salmon of an inferior and not a select grade, and for the further reason that the said representation was misleading, in that it was calculated to deceive purchasers into believing the facts so falsely represented.

Misbranding was alleged with respect to the product involved in the 914 cases of Diamond "S" brand salmon, in that the statement "15½ Oz. Net Fresh Salmon Cooked In Can After Sealing," appearing on the labels of the cans containing the article, was false, in that it represented that the contents of the said cans was so many ounces of fresh salmon, whereas in fact the said contents was not fresh fish in the sense of the term as used in the canning trade, and for the further reason that the said representation was misleading, in that it was calculated to deceive purchasers into believing the facts so falsely represented.

On January 27, 1925, the Southern Alaska Canning Co., Seattle, Wash., the Pacific American Fisheries, Bellingham, Wash., and the Shear Co., Waco, Tex., having appeared as claimants for respective portions of the product, the cases came on for trial before the court and a jury. After the submission of evidence and arguments by counsel, the court delivered the following instructions to the jury (West, D. J.):

"GENTLEMEN OF THE JURY: The issues of fact in six separate suits are submitted to you for determination. The parties have agreed and the court has consented that this may be done. The evidence in general has relevancy to each and every suit. Direct evidence having application to each particular

position, you may consider them in arriving at your judgment as to whether the shipments of salmon were adulterated or not. That is to say, whether or not the salmon was 'stale,' 'tainted,' or 'putrid,' in whole or in part; and if you find that either degree of decomposition existed as shown by a preponderance of the evidence, then your verdict would be for the libelant.

"The burden rests upon the Government, libelant, to establish to your satisfaction by a preponderance of evidence that each of the various lots of salmon seized is adulterated as herein defined. If, therefore, you believe that the greater weight or preponderance of the evidence does not satisfy you that the salmon was adulterated, in whole or in part, as defined herein, then the Government has failed to sustain the burden cast upon it, in which event you would find for the claimant or claimants, in the several separate suits submitted.

"The statute declares that an article of food which consists in whole or in part of a decomposed animal substance may be condemned. The state of decomposition, in whole or in part, as applied to the various shipments of salmon involved in these suits, requires some elucidation; for instance, what part of the whole of each shipment of salmon is to guide the jury? To what extent would the whole of the shipment be considered as partly decomposed? Would an infinitesimally small fraction of the whole of a shipment be within the meaning of the law as a 'part,' and thus require a finding against the claimants and in favor of libelant? On these questions the court instructs you that you will carefully consider the evidence of all the witnesses, both for the Government tending to establish a substantial degree of decomposition as applied to the whole of each shipment on the one hand, and all of the evidence introduced by the claimants in each suit tending to show that decomposition did not exist to any appreciable extent. It is your duty to reconcile conflicting statements of the witnesses, and likewise must you consider the evidence as a whole and thus arrive at a proper verdict in the light of all the evidence. The words of the statute 'in whole or in part' should be given a reasonable and common sense application, having reference to the purpose of the act.

"Therefore, if you should find that the adulteration or decomposition referred to extended to the whole shipment sought to be condemned in each suit, although you need not find that each and every can of salmon was so decomposed, nevertheless you should find, before warranting condemnation, that the decomposition extended to a substantial degree throughout the whole of each shipment. If such condition does exist you should find for the Government, libelant. If, on the other hand, you should find that decomposition extended to the entire shipment in each of the several suits, but that the degree of decomposition which extended throughout the whole of each shipment was in so small a proportionate degree to the whole as to be insignificant or inconsiderable, then you would find your verdict in favor of the claimant or claimants in the several suits where so small a state or degree of decomposition did so exist.

"And again, if you should find that no adulteration and no decomposition existed in any one or in all of the several shipments in the several suits being considered by you, you would find in favor of such claimant, or all of the claimants.

"You are instructed as to the allegations and charges of misbranding as set forth in cases Nos. 1032 and 1055: The Government, libelant, claims in these two cases that condemnation has been incurred because of the adulteration by decomposition of the canned salmon, and it should also be declared forfeited because of being misbranded. The misbranding in case No. 1032 is charged to consist of a false and misleading statement and design appearing on the labels of the cans containing the food product, having reference to a picture of a salmon with the words on the picture 'Select Pink' and words underneath 'Alaska Salmon'; that the picture and the words were intended to convey the false representations that the can contained select pink Alaska salmon but the truth is that the contents consisted of a poor pack of pink salmon of inferior and not of a select grade; that it thus was calculated to deceive prospective purchasers. The label in question was submitted to you in evidence. If you believe the greater weight of the evidence is that the cans were so labeled, bearing the picture and statements set out, and that the words and the picture were false and misleading, and that the contents of the cans were not select pink salmon, but was of a poor and inferior grade and not selected, and was thus calculated to deceive prospective purchasers, then you would be warranted in finding for the Government, libelant. But if, on the other hand, you are not so satisfied and do not find that the cans were

so labeled, or that the words and the picture in evidence are not false or misleading, and that the contents of the cans was of select pink Alaska salmon and of a select grade, then you would be authorized to find the words and the representations were not misleading and calculated to deceive as charged, in which event then your verdict would be for the claimant.

"The misbranding in case No. 1055 consists of a statement appearing on the labels of the cans of that shipment as follows: "15½ Oz. Net Fresh Salmon Cooked In Can After Sealing," charged in the libel to be false, in that it represented the contents as fresh salmon, the fact being that it was not fresh in the sense as used in the canning trade, wherefore the representation was misleading and calculated to deceive prospective purchasers. The label was submitted to you in evidence; if you believe that the greater weight of the evidence is that the cans were so labeled, bearing the statement set out, and that the representation was to the effect that the salmon canned was fresh salmon, when in fact it was not fresh in the sense the term was used in the canning trade, and that the statement was false or misleading and calculated to deceive prospective purchasers, then you would be warranted in finding for the Government, libelant. But if, on the other hand, you are not so satisfied and do not find from the evidence that the cans were so labeled or that the statement in evidence was not a representation that the salmon was canned while fresh and the contents was fresh in the sense used in the canning trade, and was not false or misleading in the particulars set forth, then your verdict will be for the claimant.

"As stated in the beginning, you are to return six separate verdicts representing your finding in each one of the several suits submitted."

The following authorities were consulted and support the instructions given:

United States *vs.* 200 Cases Tomato Catsup (D. C.), 211 Fed. 780.

U. S. *vs.* Boeckel Co. et al. (C. C. A.), 221 Fed. 885.

U. S. *vs.* 496 Boxes Oranges (D. C.), 249 Fed. 505.

A. O. Anderson & Co. *vs.* U. S. (C. C. A.), 284 Fed. 542.

U. S. *vs.* 200 Cases Salmon (D. C.), 289 Fed. 157.

Wood Mfg. Co. *vs.* U. S. (C. C. A.), 292 Fed. 133.

Department of Agriculture records:

Notice of Judgment No. 5527, District Judge Landis, Illinois, charge to jury in U. S. *vs.* 5,060 Cans Tomato Pulp, January 16, 1917.

Notice of Judgment No. 12056, District Judge Faris, Missouri, charge to jury in U. S. *vs.* 496 Cases Salmon, January 16, 1924.

The jury then retired and after due deliberation returned on January 29, 1925, verdicts for the Government.

On or about January 29, 1925, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product be released to the said claimants upon application within 90 days from the entry of the decrees and upon the execution of good and sufficient bonds, in conformity with section 10 of the act, conditioned in part that the product be salvaged and reprocessed, and it was further ordered by the court that the Government recover its costs.

R. W. DUNLAP, *Acting Secretary of Agriculture.*

13606. Adulteration and misbranding of assorted preserves. U. S. v. 557 Cases of Assorted Preserves. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 20063, I. S. Nos. 14726 to 14731-v, incl. S. No. C-4723.)

On May 6, 1925, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 557 cases of assorted preserves, at Cincinnati, Ohio, consigned February 13, 1925, by Eigelberner Food Products Co., Chicago, Ill., alleging that the articles had been shipped from Chicago, Ill., and transported from the State of Illinois into the State of Ohio, and charging adulteration and misbranding in violation of the food and drugs act. The articles were labeled in part: (Jar) "Jack Frost * * * Strawberry" (or "Raspberry" or "Blackberry" or "Cherry" or "Peach" or "Loganberry") "Pure Preserves."

Adulteration of the articles was alleged in substance in the libel for the reason that a substance deficient in fruit and containing excessive sugar and added tartaric acid and also containing in the case of the raspberry and blackberry preserves added loganberries had been mixed and packed therewith so